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EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/784,292

Applicant(s)

FLETCHER ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 17 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10, 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. It is noted that the marked up copy of claim 1, line 8, and claim 21, lines 3, 11, 13, 15 and the corresponding portions of the clean copy did not comply with 37 CFR 1.121. The Examiner has made the necessary red ink changes to such to bring the claims into compliance. Any further response should be in compliance with 37 CFR 1.121.
2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 3-17-03 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance. Approval of the corrected Figures 1 and 2 is held in abeyance until such time as a full set of corrected formal drawings is of record.
3. Applicant's remarks on pages 7-8 have been considered but are either deemed moot in that such issues have not been reraised.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 9-12, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Bolick '508 in view of Kuepper et al '298.

See Figures, chassis is 10, side panels are 18, fastening components are 20, mating fastening components are 22, and the dimensions of the side panels are disclosed at col. 5, lines 44-46 and col. 6, lines 1-5, i.e. straps which are 5 inches wide are 50% of a combination which is 10 inches in length, i.e. at least 20% as claimed. With regard to claims 9-12, see col. 1, lines 8-13, col. 2, lines 1-18 and 34-38, and col. 5, lines 15-19. Note definitions on page 7, lines 11-16

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of the instant application. Col. 1, lines 10-13 and col. 5, lines 15-17 appear to disclose disposable material side flaps, i.e. "may" also infers "may not", i.e. may not be used for multiple applications.

In any case, it is noted that the side panels are clearly disclosed as comprising "durable material", see cited portions, and durable material is capable of disposal after one or many uses, i.e. capable of being "disposable". With regard to claims 17-20, see col. 1, lines 7-13, and col. 2, lines 57-61 and Applicant's remarks on page 8, last paragraph of the 3-17-03 response. Therefore the Bolick device includes all the claimed structure except for the side panels including a linear waist edge and a leg edge which is curved. Note col. 1, lines 51-68, col. 2, lines 53 et seq and col. 5, lines 21-26 of Bolick, i.e. the desire to provide good fit and comfort by, e.g., not binding or irritating. See also Kuepper et al Figures, col. 1, lines 6-46, col. 3, line 64-col. 5, line 2, i.e. a fastening device which is not only elastic but has a linear waist edge and curved leg edge as compared to a rectangular or belt-like shape provides a better fit and more comfort. To employ the claimed shape of the elastic fastening device as taught by Kuepper et al on the Bolick elastic fastening device rather than the rectangular shape thereof would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a better fit and more comfort and the desire by Bolick for good fit and comfort.

6. Claims 1-2, 5-11, 14-21, 23, 25, 27, 29, 30, 34, and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen '162.

Claim 1: see Figures, chassis is 22, col. 3, lines 31-38, side panels are 40, col. 4, lines 16-19, fastening components are 56, col. 5, lines 55-56, mating fastening components are 42, 44, col.

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4, lines 16-19, and the dimensions are disclosed at col. 3, line 68- col. 4, line 3 and col. 5, lines 57-61, i.e. straps which are 3 inches wide are about 33% of a shell which is 10 inches long, i.e. at least 20% as claimed. Also note Figures 1, 3 and 4 which show the straps 40 as having a constant width dimension therealong, i.e. the length dimension as claimed is constant. Each panel 40 has waist and leg edges which are both linear, see Figure 3, and a portion which is curved, see 51 and 52 in Figure 4.

Claim 2: see col. 4, lines 19-21 and col. 5, lines 55-56.

Claim 5: see page 31, lines 6-7 of the instant specification, i.e. "Material ... renders ... suitable...wipes", in other words a material capable of use as a wipe. As defined by the American Heritage Dictionary, "wipe" is "To subject to light rubbing or friction, as of a cloth or paper, in order to clean or dry". In other words a cloth or paper is deemed a material or structure capable of use as a wipe. See col. 10, line 50-col. 11, line 52 of Kuen which discloses cloth side panels. Thus, since Kuen includes the structure of a cloth, that structure is also deemed inherently capable of the same function or capability as that of the claimed structure, see MPEP 2112.01.

Claim 6: see col. 4, lines 7-10.

Claim 7: see col. 5, lines 38-48.

Claim 8: see col. 5, lines 57-59.

Claim 9: see col. 4, line 7(note "may" inherently includes "may not"), and col. 5, lines 38-48.

Claims 10-11: see col. 3, lines 23-24.

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Claims 14-16: see discussion of claims 7-8 supra or col. 10, line 57-col. 11, line 13.

Claims 17-20: see col. 1, lines 11-20 and col. 3, lines 23-30.

Claims 21, 23, 25, 27, 29, 34, 36-38: see discussion of claims 1-2, 5-11, and 14-20 supra.

Additionally see col. 4, line 55-col. 5, line 31, i.e. “preferably” does not require the preferred structure, i.e. desirably though not necessarily, i.e. the pads 42, 44 do not have to be spaced from the ends. Thus, the seams formed by the hook and loop fasteners can run from the waist opening to the leg openings.

Claim 30: see col. 5, lines 31-33.

Claim 39: see col. 6, line 38-col. 7, line 6, i.e. bonds form tearable, non-refastenable seams.

7. Claims 13, 31-33 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen ‘162 in view of Yeo and Wallach.

Applicants claim flushability of at least one of or all of the cover, liner and absorbent of the chassis. Kuen teaches a disposable undergarment 20 including a cover, liner and absorbent and the desire for economic efficiency, see col. 3, lines 33-38 and col.9, lines 1-4 and 8-9, but not flushability of the cover, liner and absorbent. However, see col. 1, lines 16-23 and 29-40, col. 5, lines 27-29 and 49-52 and col. 22, Example 17, and col. 23, Examples 22-25 of Yeo and col. 1, lines 13-17 and 39-43, col. 2, lines 4-6 and col. 4, lines 21-25 of Wallach. To employ flushable components for at least one, if not all, of the cover, liner and absorbent of the Kuen disposable device as taught by Yeo and Wallach would be obvious to one of ordinary skill in the art in view

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of the recognition that such would provide more economic but environment disposability and the desirability of disposability and economic efficiency by Kuen.

8. Claims 3 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Kuen '789.

Applicants claim the components of the fasteners on the side panels of loop material and the components of the fasteners on the front and back panels of the chassis being hook material whereas Kuen '162 teaches the opposite. However see Kuen '789, col. 3, line 65-col. 4, line 4, col. 5, lines 66-68, col. 9, lines 58-61. To reverse the components of Kuen '162 such that the side panel fastener components are loop material while the chassis fastener components are hook material instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Kuen '789.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of LaFortuna.

Applicant claims the fastening components of the side panels include two hook and two loop material components and the mating fastening components of the chassis include two loop and two hook material components, respectively, whereas Kuen teaches that the fastening components are all hook material and the mating fastening components are all loop material. However see LaFortuna, col. 8, lines 31-37 and col. 7, line 61-col. 8, line 14, i.e. the surfaces of the components that interlock with each other can be either hook or loop material as long as they lock with each other. To make the hook fastening components and loop mating fastening

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components of Kuen '162 fastening components including two hook and two loop material components and the mating fastening components including two loop and two hook material components, respectively, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by LaFortuna.

10. Claims 22, 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Ygge et al.

Applicant claims the fastening material of the chassis being on the inner surface thereof while the mating fastening material of the side panel is on the outer surface thereof which is the opposite of what Kuen teaches. See Figures 1-7 and col. 5, lines 20-27 of Ygge. To make the chassis outside fasteners and the inside side panel mating fasteners of Kuen chassis inside fasteners and side panel outside mating fasteners instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Ygge et al.

11. Applicant's remarks on page 9 with respect to Bolick have been considered but are deemed moot in that the 102 rejection based on Bolick has not been repeated. With regard to Applicant's remarks on pages 9-13 with regard to the rejections based on Kuen '162 have been considered but are deemed nonpersuasive in that Applicant's arguments are narrower than the claim language and the teachings of Kuen, i.e. the claims do not specify the direction of curvature nor linearity and the Kuen device shows edges which are both linear and curved. With regard to claim 39, as defined by the American Heritage Dictionary "seam" is defined as "A line of junction formed by sewing together two pieces of material along their margins. A similar line, ridge or



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groove made by fitting , joining or lapping together two sections along their edges.” and Kuen does teach a line of junction made by joining or lapping together two sections along their edges, see portions cited supra. Page 31 does not set forth that the seam is the material of the side panel itself which can be torn. Therefore Applicant’s arguments are narrower than the disclosure, the claim language and the ordinary meaning of the term “seam”, see *Texas Digital Systems, Inc v. Telegenix*, \_\_\_ F.3d \_\_\_ (Fed. Cir. October 16, 2002)

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The newly cited art which was not applied teaches chassis/side panel combinations.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any new grounds of rejection were necessitated by the language added to the independent claims 1, 21 and 34.

14. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

K. M. Reichle

May 26, 2003

K. M. Reichle  
KAYIN REICHEL  
PATENT EXAMINER